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Dear Ms Burgess,

SHORT-TERM LETS: LICENSING ORDER

I am writing to update you on revised plans for the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 which will establish a short-term lets licensing scheme across Scotland.

The purpose of the licensing scheme is to ensure short-term lets are safe and address issues faced by neighbours; to facilitate licensing authorities in knowing and understanding what is happening in their area; and to assist with handling complaints effectively.

You will recall that I wrote to the Committee on 19 August to advise of my plan to lay the Licensing Order in November, and to explain the reasons for this change including that we were carrying out further consultation and engagement. I am writing today to explain the significant and pragmatic changes I propose to make to the Licensing Order to address issues raised with me during that process. The changes to the licensing legislation or guidance will be in the following areas:

- Removing overprovision powers
- Simplifying publicity and notifications
- Adding an appeal for temporary exemptions
- Reducing public liability insurance requirements
- Focused use of inspections
- Stronger guidance on fees
- Facilitating home sharing and bed and breakfast
- Removing natural names from the public register.

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Removing overprovision powers

Overprovision was included within the draft Licensing Order published in December 2020 and additional safeguards were added to the revised Licensing Order and extensive draft guidance to local authorities published on 25 June 2021. Those changes gave hosts and operators more clarity, rights and protections than they had in the 2020 Licensing Order.

During the 2021 consultation, concerns were raised that overprovision powers in the Licensing Order created additional complexity and uncertainty and that it would take time to consult on and introduce overprovision policies. Having considered these representations, I am of the view that the powers given to local authorities to establish control areas are sufficient to implement overprovision policies, where local authorities wish to do so. One of the main purposes of control areas is to help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood), achieving largely the same effect as the overprovision powers.

Licensing authorities have the power to refuse to consider a licence application if they consider that the use of the premises would breach planning control. Compliance with planning control is a mandatory licence condition in control areas.

We have already issued [Planning circular 01/2021: short-term let control areas](#) (25 June 2021) to guide planning authorities in establishing control areas. The City of Edinburgh Council is consulting on designating the city as a control area. Highland Council is considering whether to designate Badenoch and Strathspey as a control area. We also published [draft guidance on planning for hosts and operators](#) on 25 June, which we will finalise with the stakeholder working group once the Licensing Order is finalised. We will consider how to make sure that residents and community groups are aware of the new planning powers that are available to their local authorities.

All short-term lets will require to be licensed by 1 April 2024. The first indications of future activity will emerge in April 2023, as all existing operators will need to have submitted an application for a licence by 1 April 2023 in order to continue operating. We will work with local authorities to review levels of short-term let activity in hotspot areas in summer 2023 to see whether any further measures are required. This review will also seek to confirm that the wider sector is still healthy, making sure we have avoided unintended consequences.

Simplifying publicity and notifications

The consultation draft Licensing Order put the duty on licensing authorities, rather than the applicant, to publicise a licensing application. It gave licensing authorities the choice of doing this by sending notice to neighbours or displaying a notice. I have listened to concerns raised about this by the Law Society and a number of local authorities.

The proposal that notification should be undertaken for all premises within 20 metres was considered disproportionate (compared to other regimes such as alcohol licensing where the equivalent distance is 4 metres). There were also concerns that local authorities did not have the resources to cope with site notifications rather than placing the obligation on the applicant to do this. Finally, the existing 1982 Act process, in which applicants put up a site notice, was considered to be well understood and to work well for existing licensing regimes.

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It was suggested that template site notices could be made available to hosts and operators as part of the application pack.

Having heard this feedback, I propose to revert to the existing 1982 Act procedures and commit to develop a template site notice to accompany the guidance. This will help applicants and licensing authorities and it will also facilitate residents and neighbours in knowing what to look out for. It will also make a modest, positive impact in reducing fee costs, as local authorities will no longer face the cost of posting or placing notices.

Some respondents have suggested that application information should be published on-line. Under a temporary amendment made by the Coronavirus (Scotland) Act 2020, public notice of licence applications for current licensing regimes may be given by publication of a notice on the licensing authority's website. We will explore with licensing authorities the feasibility of them publishing some basic information about live applications on their websites, so that residents and community groups can find out about applications more easily.

Adding an appeal for temporary exemptions

The Law Society noted that there was no right of appeal in relation to a temporary exemption being granted or refused. In the absence of an appeal provision, anybody that wanted to challenge a decision to grant or refuse would have to go to a judicial review. We propose to include an appeal provision in the Licensing Order to address this concern.

Reducing public liability insurance requirements

The consultation draft Licensing Order requires public liability insurance providing cover of not less than £5 million. We included an estimate of £100 per annum for a £5 million public liability insurance policy in the BRIA. Airbnb and the Scottish Bed and Breakfast Association raised concerns about the true cost of this requirement and the effect it would have on hosts using their own homes. They have suggested that the Licensing Order should not be prescriptive about how much public liability insurance cover is required but should seek to ensure that adequate cover is in place.

I propose to remove the specified figure from the Licensing Order and instead require adequate insurance. We will also make clear that public liability insurance need only be in place for the time that guests are staying at the premises and for the protection of the guests. This will make it easier for hosts to use public liability insurance provided by platforms as part of their booking service.

In guidance, we propose to include advice that public liability insurance should be at least £2 million for whole property lets and that home sharers should seek advice. However, we will be seeking the views of the stakeholder working group on this as we finalise the guidance.

Focused use of inspections

A significant factor in the cost to a licensing authority in implementing a licensing scheme is the inspection of premises. We want licensing authorities only to use inspections as part of a risk-based, intelligence-led approach. We want licensing authorities to allow applicants to self-certify adherence with mandatory conditions on application. The applicant would be breaching their licence conditions if it transpires later that they are not in compliance.

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Therefore, I propose to set out in guidance the relevant factors to consider in whether to carry out an inspection of a particular premises. These could include, for example:

- other accreditation obtained by the host or operator;
- feedback from Police Scotland and the Scottish Fire and Rescue Service;
- peculiarities of the operation (e.g. very unconventional accommodation);
- complaints history associated with the host, operator or premises;
- intelligence from other inspections (which may indicate a higher incidence of issue or non-compliance with hosts or operators or premises of that type or in that area); and
- reputational evidence (where available) from guest reviews and internet profile.

Importantly, there is no specific liability on licensing authorities in terms of a “failure to inspect”; the licensing authority’s duties to consider an application and grant a licence, and thereafter to ensure adherence with a licence’s conditions, remain in line with the 1982 Act provisions and the current licensing framework.

Stronger guidance on fees

A fee cap was suggested at the stakeholder working group as a means of keeping fees affordable for applicants. We expect licensing authorities to set fees on a sliding scale as set out in [draft guidance for licensing authorities, letting agencies and platforms](#) and to recover their costs through fees, so an absolute fee cap would not work.

However, we do want licensing authorities to keep costs, and therefore the revenue that needs to be raised from licence fees for full cost recovery, as low as possible. Therefore, I am considering specifying an average fee in guidance which licensing authorities should not exceed. The average fee could be calculated in some way from the total fee revenue per year in relation to the total guest capacity in licensed accommodation. It is important to emphasise that the average fee is not a cap: some licence fees would exceed the average fee set out in guidance, but others would be lower.

This will now be explored further with licensing authorities, as there are a range of factors to consider which may vary across Scotland, including: differences in the size and type of accommodation; the quality of applications; the number of objections and, in particular, the licensing committee consideration. The overall cost of operating the scheme for a licensing authority is likely to be sensitively dependent on the numbers of more complex applications.

Facilitating home sharing and bed and breakfast

We want to facilitate responsible home sharing (which includes bed and breakfast in someone’s principal home). Airbnb and SBBA have expressed concern about the impact of some of the mandatory conditions in home sharing, where only some of the rooms are available to guests. We agree that fire safety of furnishings and electrical safety requirements should only apply to rooms that guests use. The other mandatory conditions logically apply to the premises or let as a whole.

We are reviewing the fire safety and electrical safety requirements to ensure that they do not go further than existing law. We will review the guidance on how to evidence compliance with the stakeholder working group.

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We would like licensing authorities to use their powers to grant temporary exemptions in order to facilitate hosts who want to try out home sharing for the first time.

Licensing authorities also have the power to grant temporary licences for a period of up to six weeks or, where an application for a full licence is made within that period of six weeks, the temporary licence lasts until the application is finally determined. Again, we would like licensing authorities to take a positive approach to applications in respect of home sharing, in particular.

We are considering whether licensing authorities should issue temporary licences as a matter of routine on receipt of an application for home sharing. This would mean that new hosts would be able to take guests before their full licence application was determined. (Existing hosts and operators applying before 1 April 2023 can continue to operate prior to determination of their licence application anyway.)

Licensing authorities have wide discretion in granting temporary exemptions or temporary licences within the powers of the 1982 Act and the Licensing Order. We will develop the guidance on granting temporary exemptions and temporary licences with licensing authorities.

Removing natural names from the public register

The consultation draft Licensing Order makes provision for names of hosts and operators (as licencees) to appear on the public register. Concerns have been raised about this. We agree that the publication of hosts' names, especially in the context of home sharing, could be off-putting to potential hosts. We are proposing that the applicant's natural name is not included in the public register but that only a company name is included where (one of) the licence holders is a body corporate.

I remain committed to getting this legislation absolutely right and thought that the Committee would appreciate an update on current thinking ahead of laying the revised Licensing Order, in view of the significant changes that I am proposing. I will also be informing stakeholders and working group members of the proposed changes.

We are also working through a range of other more technical comments and suggestions to improve the legislation and I will keep the Committee informed of any further significant developments.

I hope the Committee finds this information helpful.

Yours sincerely,



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